IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 2281 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES YES

2. To be referred to the Reporter or not? YES :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO NO

5. Whether it is to be circulated to the Civil Judge? : NO NO

GLOBAL TELE SYSTEMS (P) LTD

Versus

STATE OF GUJARAT

Appearance:

MR RAKESH GUPTA for Petitioners

MR SUDHANSU PATEL APP for Respondent No. 1

MR BP MUNSHI for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/02/2000

ORAL JUDGEMENT

This application is filed under Section 482 of the Code of Criminal Procedure with a prayer to quash and

set aside the criminal prosecution launched against the three applicants in Criminal Case No.406 of 1990 before the learned Additional Chief Metropolitan Magistrate at Ahmedabad. The applicant No.1 is a company and the applicants Nos.2 & 3 are impleaded as the Chairman and the Managing Director of the applicant No.1 company.

2. The original complaint in Criminal Case No.406 of 1990 is filed by the Superintendent of Customs (Prev.), Ahmedabad, and 16 other accused persons besides the applicants are implicated therein. The said complaint is filed expressly under the sanction of the Collector of Customs. It may not be necessary to go into details of all the contents and the allegations made against the accused in the said complaint. It is an admitted position that the office of the Collector of Customs (Prev.), Ahmedabad has issued a show cause notice on substantially the same allegations to 15 persons including the three applicants before this court. The learned advocates appearing for the respondents have fairly conceded that the basic facts and the factual allegations in the said show cause notice as well as in the complaint in the criminal case are substantially the same. Suffice it to say that the matter involves making, transfer and use of import licence which subsequently turned out to be bearing fake or forged endorsements and signature.

3. The learned advocate for the applicants has submitted that, pursuant to the aforesaid show cause notice, the Customs Department has held regular proceedings and passed the Order-in-Original dated 10.6.1996 in exercise of powers under Sections 122 & 124 of the Customs Act, 1962, which is produced before this Court with an affidavit. Going through the said order, more particularly the findings, the Customs authorities have observed and held as under with regard to the charges against the present applicants:

> "46. In so far as the second issue of imposition of penalty on the 15 noticees is concerned, I would like to take up their cases one by one and determine whether any penalty under Section 112 of the Customs Act, 1962 is imposable on them or not:-
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> 46 (i) M/s. Global Telesystem Pvt. Ltd. The company has not been charged in the show cause notice for hatching a conspiracy for forging the documents or producing forged documents. They have also not been mentioned as liable to penalty

under section 112 of the Customs Act, 1962 in the show cause notice issued on 6.4.90.

There is no evidence to implicate the company as such and hence it is held that the company is not liable to any penalty under section 112 of the Customs Act, 1962.

46(ii) G.R.Tirodkar: He was the Chairman of the Company in whose name the imports were made. He has given exculpatory statements on 12.6.89, 13.6.89 and 21.7.89 before the Customs officials of Ahmedabad. There is also no other evidence although penal provisions of Section 112 have been invoked against him in the show cause notice. Hence, it is held that he is not liable to any penalty under Section 112 of the Customs Act, 1962.

46(iii) Manojkumar G. Tirodkar: He was Managing Director of the importing company at the relevant time. All his statements dt. 14.6.89, 15.6.89 and 20.7.89 recorded before the Customs officials of Ahmedabad are exculpatory in nature.

He has been charged for producing the forged licences and penal provisions of Section 112 have been invoked against him. His main defence is as under:

(a) He acquired the 2 licences through his tried and trusted friends, viz. P.V.Rao and P.S.Pushkarna, who assured him that the licences were genuine, after verifying from Bombay Customs. He had no reasons to doubt the veracity of endorsements.

(b) He believed the licences to be genuine as the licences and the endorsements thereon had the signatures and seals of Shri B.C.Bagchi, Asst. Chief Controller of Imports and Exports, Calcutta and the transfer letters had the signatures of the transferer, M/s. Chetan Enterprises, duly verified by the Bank.

(c) He agreed to pay 100% premium on the licences, believing these to be genuine.

(d) The imports were made in their own name and address, which shows that they had nothing to hide.

(e) He has not been charged in the show cause notice for hatching a conspiracy to procure a forged licence.

(f) After discovering that he had been cheated and had been given a forged licence, he recovered the premium of Rs.11.26 lakhs paid to them from P.V.Rao and others.

It is observed that although Shri M.G.Tirodkar has been charged for presenting 2 licences with forged endorsements, there is no evidence, whatsoever, in various statements recorded from various persons in this case that he had even the slightest inkling about the forged endorsements. It is an undisputed fact that he had imported the goods in his company's real name and had mentioned its correct address and had paid a high premium on the licences.

There is only one point about his conduct which is somewhat baffling, and that is as to why he agreed to pay the premium of the licences to three parties viz. Rs.3.75 lacs to M/s. Chetan Enterprises, Rs.3.75 lacs to M/s. Jayanti Enterprises, and Rs.7.5 lacs to M/s. Sai International when the licences were purchased and transferred on record to his company from only one firm, i.e. Chetan Enterprises for an aggregate amount of Rs.15 lacs. However, even this point does not go against him, as it was P.V.Rao who had dealt with the whole affair of purchasing the licences on behalf of Tirodkar and it was he (Rao) on whose advise the payments were made to these parties. This is further corroborated by the fact that out of Rs.7.50 lacs deposited with M/s. Sai International, a sum of Rs.5.50 lacs was transferred to P.V.Rao's firm viz. Jayanti Enterprises through Grindley's Bank pay order. Thus, Pramod Rao received for his own firm a sum of Rs.9.25 lacs from M.G.Tirodkar (Rs.3.75 lacs + Rs.5.50 lacs).

Thus, it is seen that no offence, guilt or mens rea is established against M.G.Tirodkar. in so far as doing the forgery on the licences or

> procuring forged licences is concerned. Even the show cause notice does not include his name in the list of persons who have been accused of hatching a conspiracy to do the forgery on the licences or to procure forged licences. In view of these facts and circumstances, there is no question of imposing any penalty on him under the provisions of Section 112 of the Customs Act, 1962."

4. It is further submitted on behalf of the applicants that, even after these observations and findings, the criminal complaint filed by a subordinate officer need not proceed further and no useful purpose can be served by prosecuting the applicants in the criminal case. It is further pointed out from the order as above that there was no evidence to implicate the company with the charge of hatching a conspiracy and that the two other applicants were not liable to any penalty under Section 112 of the Customs Act, 1962.

5. The applicants have relied upon the decision of the Hon'ble Supreme Court in the case of P.S.RAJYA v. STATE OF BIHAR [1996 SCC (Cri.) 897] wherein it is held that, if the charge which is identical could not be established in a departmental proceeding, there hardly remains anything to further proceed in a criminal proceeding. In another judgment of the Hon'ble Supreme Court in the case of G.L.DIDWANIA v. INCOME TAX OFFICER [1999 (108) E.L.T. 16] where it was alleged that the assessee had made a false statement and that finding had been set aside by the Income Tax Appellate Tribunal, the criminal proceedings based on the same facts were quashed. The learned counsel Mr.Gupta has further relied upon two other judgments of this court rendered in Special Criminal Application No.831 of 1998 (Coram: H.R.Shelat, J.) and Criminal Miscellaneous Application No.2827 of 1999 (Coram: C.K.Buch, J.). It is pointed out from the first judgment that where the charge and the material to prove the charge are the same, which were in the departmental proceeding, and if the petitioner was exonerated in the departmental proceeding, the criminal case will serve no purpose. It is further observed that to proceed with the same would be nothing but an unproductive exercise. Relying upon these observations in the latter judgment where the provisions of FERA were alleged to have been violated, the criminal proceedings were quashed.

6. Learned advocate Mr.Munshi appearing for the respondent No.2 has argued that the departmental

proceedings and the criminal proceedings are separate and independent. It is submitted that under Section 127 of the Customs Act, 1962 the award of any penalty under the Act by an officer of Customs cannot prevent infliction of any other punishment. The person may be liable under the provisions of Chapter XVI of the Act or under any other law and, according to him, the applicants are charged with several offences under Section 135 of the Customs Act, 1962 read with Section 3 of the Imports & Exports (Control) Act as also under Section 120-A and 120-B of the Indian Penal Code. Therefore, it is submitted that the criminal proceedings in the criminal case should be allowed to be proceeded against the applicants. He has further submitted that there is no question of double jeopardy in the facts of the present case. Clear legal provisions are made for both the types of proceedings. In support of this submission, reliance is placed on the judgments in the case of COLLECTOR OF CUSTOMS & CENTRAL EXCISE v. PAPRADIP PORT TRUST [1990 (4) SCC 250]; in the case of A.K.SINGH v. BHAGWANJI JETHALAL KAGADADA [20 (2) GLR 14] and in the case of MAFATLAL DAMODAR DAS PAREKH v. UNION OF INDIA [1987 G.L.T. 180].

7. There is no dispute about the legal proposition that departmental proceedings and criminal proceedings can independently and separately be taken up. Here the issue is whether criminal proceedings ought to be quashed when no offence was made out against the accused concerned. In the facts of the present case, not only the findings as referred above are arrived at by the department itself but it is clearly further stated in the order as under:

> "In so far as personal penalty under the provisions of Section 112 of the Customs Act, 1962 is concerned I pass the following order:
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> No offence is established against the 10 noticees, namely, M/s. Global Telesystems and S/Shri G.R.Tirodkar, Manojkumar G. Tirodkar....."

It is further submitted on behalf of the applicants that in the order of the Customs, Excise and Gold (Control) Appellate Tribunal (in the appeal preferred from the Order-in-Original mentioned earlier) it is observed as under:

> " We do not find any absence of bona fides in the present case on this account. The appellant was not accused of any forgery or wrong

doing with regard to the forgery in the notice; the bona fides of the appellant are therefore established."

8. As against this submission, the learned advocate for the respondents has submitted that the offences alleged against the applicants are involving absolute liability and mens rea or bona fides were totally irrelevant. However, going through the language in which the offences are described and the penalties are provided, it does not appear that the offences are creating any absolute liability.

9. Learned advocate for the respondent No.2 Mr.Munshi has further submitted that the powers under Section 482 of the Criminal Procedure Code should not be exercised in the facts of the present case in view of the observations of the Hon'ble Supreme Court in the case of STATE OF M.P. v. S.B.JOHARI [2000 (1) Supreme 142]. He has failed to show as to how any of the observations in the said judgment are applicable in the facts of the present case.

10. For the aforesaid reasons, there is no justifiable reason for the trial Court to proceed further with the complaint as far as the present applicants are concerned. Therefore, the complaint against the present applicants is required to be quashed and set aside.

11. In the result, the application is allowed and Criminal Case No.406 of 1990 pending before the learned Additional Chief Metropolitan Magistrate, Ahmedabad is hereby quashed and set aside only as against the present applicants. Rule is accordingly made absolute with no order as to costs.

[KMG Thilake]
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